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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DENVER DISTRICT OFFICE Date: SEP 14 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Denver District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and adjust her status to permanent resident.

The interim district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of Interim District Director*, dated March 9, 2004.

On appeal, counsel for the applicant contends that the applicant did not engage in fraud or misrepresentation, and thus she is not inadmissible to the United States. *Brief in Support of Appeal* at 4. Counsel asserts that if the applicant is prohibited from remaining in the United States her spouse will suffer extreme hardship. *Id.* at 4-6.

The record contains a brief from counsel; a statement from the applicant dated May 15, 2004; a statement from the applicant's spouse dated May 15, 2004; a statement from the applicant submitted as an addendum to Form I-601; a statement from the applicant's spouse submitted as an addendum to Form I-601; a statement from the applicant's mother dated May 19, 2004; a copy of marriage registration document from the government of Ghana; an attestation from the fathers of the applicant and her spouse regarding their marriage ceremony on December 14, 2000; a letter from the applicant's health care provider confirming that she was pregnant as of May 21, 2004; a copy of a mortgage loan application form, and; copies of documentation showing current conditions in Ghana. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant and her spouse were married pursuant to a traditional ceremony in Ghana on December 14, 2000. The marriage was registered with the government of Ghana on October 11, 2002. Following the traditional marriage ceremony, in three separate B-1/B-2 visa applications the applicant represented that her marital status was "single," including applications filed on June 5, 2001, on or about June 8, 2001, and on September 10, 2002. The applicant entered the United States on October 18, 2002 pursuant to a B-1/B-2 visa, and she has remained in the country since that date. On July 7, 2003, her spouse filed a Form I-130, Petition for Alien Relative, on her behalf. Whether the applicant was married, particularly whether she was married to a U.S. citizen, was material to whether she was eligible for a B-1/B-2 visa as one with an intent to remain in the United States temporarily. Thus, the interim district director found that the applicant procured entry into the United States by willfully misrepresenting her marital status in order to obtain a B-1/B-2 visa, and deemed her inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erroneously found the applicant to be inadmissible. *Brief in Support of Appeal* at 3-4. Counsel states that the applicant was not married at the time she submitted her applications for B-1/B-2 visas, and thus she did not engage in misrepresentation when she indicated that she was not married. *Id.* Counsel cites the *Foreign Affairs Manual*, Volume 9, Appendix C, Ghana, to stand for the proposition that the applicant's marriage was not recognized under the laws of the United States or Ghana until the marriage was registered with the government of Ghana, which occurred after the applicant filed her visa applications. *Id.* Counsel further states that the applicant's husband was not present at either their traditional marriage ceremony or the registration of their marriage with the government of Ghana. *Id.* Counsel asserts that, under section 101(a)(35) of the Act, due to the fact that both the applicant and her husband were not present during the marriage ceremonies, their union was not recognized under U.S. immigration law until the marriage was consummated. *Id.* Counsel contends that the applicant's marriage was not consummated until after she filed her last application for a B-1/B-2 visa, and thus she properly represented her martial status as "single." *Id.* at 4.

Upon review, the applicant has not shown that she was erroneously deemed inadmissible. Specifically, the applicant has not established that her marriage was not valid at the time she filed her applications for B-1/B-2 visas. The Foreign Affairs Manual states that in Ghana "[m]ost marriages are performed under customary law, and written records are kept only if the couple chooses to register the marriage with the local council." *Foreign Affairs Manual*, Volume 9, Appendix C, Ghana. Contrary to counsel's assertion, the *Foreign Affairs Manual* does not provide that marriages are deemed invalid in Ghana if they are not registered with government authorities. *See id.* The fact that most marriages in Ghana are performed under customary law and that registration is optional suggests that marriages under customary law are recognized and valid in Ghana. As the evidence of record reflects that the applicant was married under customary law on December 14, 2000, her marital status in Ghana was "married" as of the date of her subsequent visa applications.[1]

Counsel correctly notes that, under section 101(a)(35) of the Act, a marriage is not recognized under U.S. immigration law if both parties were not present at the ceremony, unless the marriage has been consummated.

[1] It is noted that the applicant's spouse considered his marriage to the applicant to be valid as of the date of the traditional ceremony, as he indicated on Form I-130 that he and the applicant were married on December 14, 2000, rather than reporting the date of the civil registration of October 11, 2002.

While counsel states that the applicant's spouse was not present at either the traditional ceremony or civil registration, this has not been shown by persuasive documentation. The single item of evidence to support this assertion consists of a brief letter from the applicant's mother, in which she states that the applicant's husband was not present at the marriage ceremony. *Letter from Applicant's Mother*, dated May 19, 2004. However, the applicant's mother has not provided the basis for her observation, such as whether she was present at the ceremony. Nor has the applicant provided any explanation or documentation to show where her spouse was on the day of the ceremony, such as a copy of his passport. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the applicant has not shown that her spouse was not present during their traditional marriage ceremony. Accordingly, the applicant has not established that she was considered single under U.S. immigration law at the time she filed the B-1/B-2 visa applications in question. Thus, the applicant was properly deemed inadmissible under section 212(a)(6)(C)(i) of the Act.[2]

As the applicant has not overcome the ground of inadmissibility, the AAO will assess whether she has established eligibility for a waiver. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant states that her husband will suffer extreme hardship if she is compelled to leave the United States. *Applicant's Statement in Support of Appeal.* The applicant provides that she is pregnant, and she discusses possible hardships to her and her unborn child. *Id.* at 1. The applicant's spouse describes

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[2] It is further noted that, on the applicant's B-1/B-2 visa application submitted on September 10, 2002, she indicated that she intended to visit the United States for "four weeks." One month later, on October 11, 2002 she registered her marriage to a U.S. citizen. One week later, on October 18, 2002, she entered the United States. She has not left the country since that date, and on July 7, 2003 her spouse filed a Form I-130, Petition for Alien Relative, on her behalf. Thus, it appears that the applicant intended to enter the United States for an indefinite period in order to reside with her spouse. The fact that the applicant stated that she intended to enter the United States for only a four-week period may constitute an additional act of misrepresentation, rendering the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

possible hardship he would suffer if the applicant were to have her baby and leave the child with him. *Statement* of *Applicant's Spouse in Support of Appeal.* The applicant's spouse states that his salary of $22,497 is insufficient to meet his financial needs including a mortgage payment, thus he implies he requires financial assistance from the applicant. *Id.* The applicant's spouse indicates that he will suffer emotional hardship should the applicant be prohibited from remaining in the United States. *Id* at 2. The applicant's spouse further states that he would experience hardship if he relocated to Ghana, as he would have difficulty finding suitable employment and conditions in the country are poor. *Id.* at 1. Counsel contends that the applicant's spouse would suffer economically in Ghana, and he would not have adequate health care. *Brief in Support of Appeal* at 5. Counsel asserts that the hardship to the applicant's husband would be greater than that defined in *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (BIA 1999), as the applicant has greater financial ties to the United States, and conditions in Ghana are worse than those in Mexico. *Id.* at 5-6.

Upon review, the applicant has not shown that her spouse will suffer extreme hardship should she depart the United States. The applicant's husband explains that he will suffer economic hardship if the applicant departs the United States, as he depends on financial contribution from the applicant to meet his monthly expenses including a mortgage payment. However, the applicant has not shown that her spouse will be unable to meet his financial needs in her absence. While the applicant's spouse draws a salary of $22,497, the record does not reflect whether the applicant earns an income, and if so, the amount of such income. While the applicant submits a mortgage loan application form that reports that she earns income, the form is unsigned and contains no indication of whether it was approved, or the basis of the information contained therein. Thus, the applicant has not established that she in fact currently earns income or assists her husband in meeting monthly expenses. Further, the applicant has not indicated that her husband supported her in Ghana when she recently resided there, thus it has not been shown that he would be required to support her should she return to Ghana. Accordingly, the evidence of record does not support that the applicant's husband would be unable to sustain his financial position without the assistance of the applicant. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant's spouse expresses that he would suffer emotional hardship due to separation from the applicant. The AAO acknowledges that the applicant's spouse will experience emotional difficulty if the applicant is compelled to depart the United States. However, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The situation of the applicant's husband, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

Counsel and the applicant's husband state that conditions in Ghana are poor, and the applicant's husband would experience hardship should he relocate there. The AAO notes that, as a U.S. citizen, the applicant's

husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. However, should he choose to relocate to Ghana with the applicant, as a native of Ghana it is evident that he would experience limited difficulty associated with adjusting to a new culture. While counsel asserts that the applicant would be deprived of adequate health care, the evidence of record does not support that he suffers from any health conditions or that he requires medical care that cannot be obtained in Ghana.

The applicant refers to hardship she and her unborn child would experience as a result of her inadmissibility. However, hardship to the applicant or her children is not relevant in the present proceedings. Section 212(i) of the Act. Further, as the applicant's child had not been born as of the date that the appeal was filed, speculative hardship to the applicant's spouse due to having this child is not probative of the applicant's eligibility for a waiver.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. Thus, the applicant has not shown that her inadmissibility would result in extreme hardship to a qualifying relative, and she is statutorily ineligible for relief. *See* section 212(i) of the Act. Accordingly, CIS lacks the discretion to approve the application for a waiver, and no purpose would be served in discussing the balance of positive and negative factors that would determine whether she merits a waiver as a matter of discretion. *Id.*

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.